

No. 4835-4-Lab-71/15138.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Busching Schmitz (P) Ltd., Faridabad.

**BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD**

Reference No. 122 of 1970

between

**SHRI SARUP SINGH WORKMAN AND THE MANAGEMENT OF M/S BUSCHING SCHMITZ
(P) LTD., FARIDABAD.**

Present :—Shri Darshan Singh, for the workman.

Shri S.L. Gupta, with Shri Mandhir Singh Manocha for the management.

AWARD

The Governor of Haryana in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal,—*vide* order No. ID/FD/493A/8887, dated 31st March, 1970.

Whether the termination of services of Shri Sarup Singh was justified and in order ? If not ; to what relief is he entitled ?

On receipt of the reference notices were issued to the parties and they have filed their respective statements. However, it is not necessary to go into the merits of the case as the parties have arrived at an amicable settlement,—*vide* Memorandum of settlement Ex, M-2. Shri Sarup Singh concerned workman has received Rs 600 from the management in full and final settlement of his entire dues and has given up his right of reinstatement or re-employment.

Statements of the parties have been recorded. They have verified the aforesaid settlement and want a no dispute award. I accordingly given a no dispute award in the case but without making any order as to costs.

The 30th April, 1971.

**O.P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.**

No. 391, dated the 30th April, 1971.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

**O.P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.**

No. 4834-4Lab-71/15140.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Executive Engineer Drainage Division, Karnal.

**BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD**

Reference No. 98 of 1970

between

**THE WORKMEN AND THE MANAGEMENT OF M/S EXECUTIVE ENGINEER DRAINAGE
DIVISION KARNAL**

Present—

Shri Madhu Sudan Saran Cowshish and Shri Sain Dass, for the workmen.

Shri Dharam Chand Dua, for the management.

AWARD

An Industrial Dispute existing between the management of M/s Executive Engineer Drainage Division, Karnal and their workmen as per list annexure 'A' was referred to this Tribunal by the Governor of Haryana in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Dispute Act, 1947, —vide Order No. ID/15082, dated 21st May, 1970 with the following term of reference.

Whether the workmen mentioned in enclosed list should be confirmed, if so; with what details and from which date ?

In receipt of the above reference usual notices were given to the parties and they put in their respective statements. In the claim statement filed on behalf of the workmen it was urged that the concerned workmen had been serving the drainage Department of P.W.D., Karnal Division for the last more than 10 years with the exception of Shri Parkash (at serial No. 9 of the list who had been in the service for 8 years) but in spite of this long span of service they had not been made permanent with the result that they had been deprived of benefits available to permanent employees such as leaves, Provident Fund, Gratuity, Pension, etc. and it had affected their chances of promotion to other higher ranks. It was further urged that the action of the department in treating them as work charge employees only without any chance of being made permanent was tantamount to punitive punishment without any justification. It was, therefore, prayed that all the workmen should be made permanent and they should be entitled to the benefits due to them as permanent workmen with effect from the expiry of 240 days of work in the department.

The management in the written statement filed on 12th November, 1970 contended that there was no permanent cadre of work charge establishment and the number of work charge establishment was enhanced and reduced according to the provisions of estimate from time to time. It was further urged that the Executive Engineer has no power to make permanent any of the establishment.

From the above pleadings of the parties the only issue that arose from determination in the case was precisely the same as per the terms of reference. Seventeen of the workmen have come into the witness box and stated on oath that they have been working in the Irrigation Department for about 10 years but they had not been made permanent and the advantages available to the permanent workers in the matter of grades, leaves, pension, gratuity, bonus, etc. had been denied to them.

Shri Dharam Chand die, authorised representative of the management had himself come into the witness box and reiterated the pleas taken in the written statement referred to above. In his supplementary statement recorded on 12th April, 1971, however, he has conceded that the department would have no objection to the workmen being made permanent according to the rules but the Executive Engineer Drainage Division Karnal is not competent to make them permanent.

I have heard the learned representatives of the parties and considered the facts on record which are more or less admitted. There is no denying the facts that the concerned workmen have been in the service of the department for 10 years or so but they have all along been treated as work charge establishment without making them permanent. Naturally they have been deprived of monetary benefits and other advantages available to the permanent employees in the matter of grades, increments, leaves, gratuity, pension etc., and for no fault of their. The only argument advanced on behalf of the management is that there is no permanent cadre of work charge establishment in the department and the Executive Engineer is not competent to make the workmen permanent. But there was apparently no bar to his moving the head of the department to confirm these workmen. The learned representative of the management has half heartedly admitted during the course of arguments that such a move has already been made.

It would thus appear that the claim of the present workmen for being confirmed against the posts which they have held continuously for 10 years or so is well founded. It finds further support in the directions issued by the Chief Secretary to the Government of Punjab Chandigarh, —vide endorsement No. 13531-ICS-11655, dated 20th November, 1961 to all the Heads of the Departments regarding conversion of temporary posts into permanent once, referred to by the learned representative of the workmen during his arguments. The learned representative of the management has nothing to say against these directions nor it has been shown that the same had been withdrawn before the bifurcation of the States of Punjab and Haryana in November, 1966. According to these directions a temporary post which had existed for 5 years or more had to be made permanent automatically. I have further been referred to 1962-I-L.L.J., page 218 to show that the Tribunal is competent to issue a direction for making of the employees of a establishment permanent as may be demanded by the facts of each case.

For the reasons aforesaid, the issue is decided in favour of the workman and they are held entitled to confirmation against their respective posts from the dates they completed five years of service in the department and on confirmation they would be entitled to all the benefits due to permanent employees under the rules in the matter of Pay Scales, Leaves, Gratuity, Pension, Bonus, etc. The reference is accordingly answered in favour of the workmen but without making any order as to costs.

Dated 29th April, 1971.

O.P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 387, dated the 29th April, 1971

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 29th April, 1971.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 4839-4Lab-71/15141.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Tourist Cooperative Transport Society, Ltd., Ambala City.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 2 of 1971

between

THE WORKMEN AND THE MANAGEMENT OF M/S TOURIST CO-OPERATIVE
TRANSPORT SOCIETY, LTD., AMBALA CITY.

Present—

Nemo, for the workmen.

Shri Raghunath Singh, Administrator, for the management.

AWARD

The Governor of Haryana, in exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, was pleased to refer the following dispute for adjudication to this Tribunal,—*vide* order No. ID/UMB/73-D-70/2911, dated 21st January, 1971.

“Whether the workers of the company should be paid bonus for the year 1968-69 ? If so; what should be the quantum of bonus and terms and conditions of its payment ?

The above reference was received on 22nd January, 1971. Notices were issued to the parties for appearance and for the filing of their respective statements on 16th February, 1971 at Sonapat. Neither party appeared when the case was taken up in the earlier hours. Shri Raghunath Singh authorised representative of the management, however, put in his appearance on that day at about 1.30 p.m. but did not file any written statement. The case was then adjourned to 24th February, 1971 at Karnal and notices were issued to the parties as before. None appeared on behalf of the workmen and a telegram was received from the management asking for adjournment of the proceedings alledging that the notices of the date has been received late. The case was adjourned to 16th March, 1971 at Ambala Cantt and the management was informed accordingly. Services of the union leader was also effected but neither party appeared on that date. The case was again adjourned to 12th April, 1971 at Sonapat. Shri Charan Singh Kharbanda, Authorised representative of the management put in his appearance but without filing any written statement, where as none appeared on behalf of the workmen.

Thereafter the case was adjourned for today at Sonapat. Shri Raghunath Singh, Administrator of the respondent society has appeared but the workmen have again choosen not to put in their appearance nor is any authorised respresentative of the workmen present to take part in the proceedings in spite of service.

From the facts stated above, it would appear that the workmen are not taking any interest in the proceedings themselves in person or through any authorised representative. No statement of claim has been filed by them in spite of the fact that several adjournments has been granted in the case for the purpose. The statement of Shri Raghunath Singh, Administrator of the respondent society has been recorded. According to him the society is in a very bad financial position and its buses and other assets have been reduced to one-fourth on account of the nationalisation of 75% of the routes. In the circumstances I do not think any further proceedings are called for in the case and the presumption is irresistible that the workmen are not interested in this reference probably because of the poor financial position of

respondent society consequent upon the nationalisation of the routes as stated by Shri Raghunath Singh. I, therefore, pass a no dispute award in the case but without making any order as to cost.

Dated 28th April, 1971.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 392, dated the 30th April, 1971

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 28th April, 1971.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 4836-4Lab-71/15144.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Nirula Bros. (P), Ltd., Gurgaon.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 107 of 1970

between

THE WORKMEN AND THE MANAGEMENT OF M/S NIRULA BROS. (P) LTD.,
GURGAON

Present.—

Shri Sardha Nand for the workmen.

Shri S.K. Basin, for the management.

AWARD

The Governor of Haryana in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal,—*vide* order No. IDGG/2D-70/23248, dated 3rd August, 1970:—

- (1) Whether the contract system in polishing and handle Joining Departments of the factory should be abolished. If so, with what details and from which date ?
- (2) Whether the workers of the Polishing Department should be provided Gur? If so, with what details ?

On receipt of the reference notices were given to the parties. The workmen filed their claim statement on 4th December, 1970 alleging that the workers employed in the factory on contract basis did not get benefits such as dearness allowance provident fund, bonus, etc., available to the regular employees and the contract system which was illegal should be abolished. It was further urged that the Gurgaon Engineering Workers Union was the sole bargaining agency on behalf of the workmen functioning since 1966 and as per policy of the Government of India and the decision of the Tripartite Committee the management should be directed to recognize the union.

The management filed the written statement on 5th February, 1970 contesting the claim of the workmen. Some legal objections were also raised pleading *inter alia* that there was no industrial dispute between the parties as the demands in question had never been raised on the management. The following issues were framed in the case:—

- (1) Whether Gurgaon Engineering Workers Union had no *locus standi* to raise the dispute (On management).
- (2) Whether the present dispute is not an industrial dispute as is has not been espoused by a substantial number of workers of the factory ? (On management).

- (3) Whether the concerned workers had raised the demands covered by this reference on the management ? If not, with what effect ? (on workers).
- (4) Whether the demand covered by item No. 2 of the reference is liable to be dismissed as the same has not been pleaded in the claim statement filed before this Tribunal ? (On management).
- (5) Whether the demand regarding the recognition of the Union can be entertained by this Tribunal in the present reference ? (on workers).
- (6) Whether the contract system in polishing and Handle Joining Departments of the factory should be abolished. If so, with what details and from which date ?
- (7) Whether the workers of the Polishing Department should be provided Gur ? If so, with what details ?

Two witnesses have been examined on behalf of the workmen, namely, Shri Chander Pal Singh, W.W. 1 and Shri Sardha Nand, General Secretary, Gurgaon Engineering Workers Union, Gurgaon, authorised representative of the workmen, W.W. 2, who have deposed that their union had decided to raise the demands covered by the present reference and Shri Sardha Nand had been authorised to fight the case on behalf of the workers. It has further been stated that out of 40 or 45 workers of the present establishment 18 or 19 were members of the union and they had all attended the meeting in which the aforesaid decision were taken.

On behalf of the management Shri L.C. Arora, W.W. 1 has come into the witness box and deposed that no demand have ever been raised by the workers or their union on the management and Shri Sardha Nand, General Secretary of the Union had never approached the management in this behalf.

I have heard the learned representatives of the parties and considered the facts on record. The preliminary objections raised on behalf of the management giving rise to preliminary issues Nos. 1, 2, 3 and 5 appear to be quite forceful and the workmen have brought no evidence worth consideration to refute the same. To begin with the *locus standi* of Gurgaon Engineering Workers Union to raise the dispute has been challenged. It has been urged on behalf of the workmen that 18 or 19 workers of the present establishment were members of the Gurgaon Engineering Workers Union and they had authorised Shri Sardha Nand, General Secretary of the said union to raise the demand on their behalf. But that reason best known to the workers concerned the relevant record pertaining to the membership of the union, the resolution alleged to have been passed in the meeting of the union has been withheld and no reasonable explanation has been afforded for not producing the said record which had an important bearing on the decision of the matter in issue. The presumption is, therefore, irresistible that if produced this record would not have supported the case of the workers. The learned representative of the workmen has not been able to satisfy me to the contrary.

There is thus no evidence to show that the workers of the present establishment were members of the Gurgaon Engineering Workers Union nor that a substantial number of the workers of the establishment had espoused the present dispute as required by law. Issues Nos. 1 and 2 are, therefore, decided against the workmen.

Issue No. 3.—The contention raised on behalf of the management is that there is no industrial dispute in the eye of law as the demands covered by the present reference had never been raised by the workmen or their union on the management. The learned representative of the workmen has not been able to refute this contention and I have not been referred to any reliable evidence on record to show that before taking up the matter to the Conciliation Officer the workers had raised the demand in question on the management which was necessary according to the rule of law laid down in *Sindhu Re-settlement Corporation Ltd. versus Industrial Tribunal, Gujarat*. In support of the above contention I have further been referred me to the decision dated May 28, 1969, of the Delhi High Court in Civil Writ No. 100 of 1969 between *Fedders LLOYD Corporation, Private Ltd., and Lieutenant Governor, Delhi and others* wherein their Lordships Mr. Justice I.D. Dua (C.J.) and Mr. Justice V.S. Deshpanda following the aforesaid decision of the Supreme Court were pleased to observe as under :—

“We are of the view that the decision of the Supreme Court in *Sindhu Resettlement Corporation versus Industrial Tribunal, Gujarat (Supra)*, referred to above, has finally established the proposition that a demand by the workmen must be raised first on the management and rejected by them before an industrial dispute can be said to raise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejects the same, is not sufficient to constitute an industrial dispute. The decision and dicta of some of the High Courts to the contrary can no longer be considered good law.”

The demand in question having thus not been raised on the management, there is no industrial dispute between the parties as laid down in the aforesaid authorities, the issue is accordingly decided against the workmen.

Issue No. 5.—The demand regarding the recognition of the union is not covered by the reference and otherwise, also, it has not been shown as to under what law this Tribunal is competent to adjudicate upon this demand. This issue is held against the workmen.

In view of the above decision on issues Nos. 1, 2 and 3 no further proceedings are called for in the case and it is not necessary to go into the issues on merits for the simple and obvious reason that there being no industrial dispute between the parties nor any dispute having been properly raised. This Tribunal has no jurisdiction to adjudicate upon the demands, the subject matter of the present reference. I accordingly give the award against the workmen but without making any order as to costs.

Dated 30th April, 1971.

O.P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 389, dated 30th April, 1971

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 30th April, 1971.

O.P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 10th/12th May, 1971

No. 4915-1Lab-71/15460.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Hindustan Wastes Processing Factory, Industrial Area, Yamunanagar :—

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 181 of 1970

between

SHRIMATI MANSO BAI C/O PT. MADHU SUDAN SHARAN COWSHISH, LATHMARAN STREET, JAGADHRI AND THE MANAGEMENT OF M/S HINDUSTAN WASTES PROCESSING FACTORY, INDUSTRIAL AREA, YAMUNANAGAR

Present :—

Shrimati Manso Bai, workman.

Shri K. L. Sehgal for the management.

AWARD

Shrimati Manso Bai was in the service of M/s Hindustan Wastes Processing Factory, Yamunanagar. Her services were terminated and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Court, *-vide* Gazette Notification No. ID/UMB/10-A-70/29853, dated 23rd September, 1970.

Whether the termination of services of Shrimati Manso Bai was justified and in order. If not, to what relief is she entitled ?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. It is, however, not necessary to decide the case on merits because a compromise has been arrived at between the parties. The workman has received Rs. 23.21 on account of salary from 1st February, 1970 to 11th February, 1970 and Rs. 122/- on account of bonus for the year 1969-70. A sum of Rs. 330.30 were due to the workman on account of Provident Fund. A cheque for this amount was also given to the workman.

The claim for re-instatement has been given up. The workman is not entitled to any other relief. I give my award accordingly. No order as to costs.

Dated 30 April, 1971.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 742, dated Rohtak, the 4th May, 1971.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

B. L. AHUJA,

Commissioner for Labour and Employment,
and Secretary to Government, Haryana,